

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ALTA PAULSSON,)
Plaintiff,) NO. CV-07-0168-LRS
v.)
COULEE CITY, et al.,) ORDER GRANTING DEFENDANTS'
Defendant.) MOTION FOR SUMMARY JUDGMENT

BEFORE THE COURT is Defendants' Motion for Summary Judgment, Ct. Rec. 7, filed October 31, 2007. The Plaintiff, Alta Paulsson, is represented by Paul Burns. The Defendants, Coulee City and Robert Little, are represented by Stephen Lamberson. This motion was heard with oral argument on January 24, 2008. After careful review of the pleadings, exhibits, and declarations submitted by both parties, and oral argument from both sides, the Court finds that there are no genuine issues of material fact, and Defendants are entitled to summary judgment as a matter of law for the reasons set forth below.

I. SUMMARY OF FACTS

26 The facts are essentially undisputed. In August 2002,
27 Plaintiff Alta Paulsson was hired as the Clerk/Treasurer of
28 Defendant Town of Coulee City ("Town"), a position that is

1 partially supervised by the Town Mayor, Defendant Robert E. Little
2 and overseen by the Town Council.

In May 2004, the Town issued a concession permit to Kevin Prather to operate a watercraft rental business in the Coulee City Community Park during the summer months. To provide electricity to Mr. Prather's trailer, the Town connected the trailer to a Town street light. For the summers of 2004 and 2005, Mr. Prather was not charged for the electricity used by the trailer, which was estimated at a total of \$233.68 for the two summers. Defendant Little believed the Town was supplying the electricity in return for the recreational opportunities Mr. Prather's business was providing to the community, the business's contribution to tourism and, the percentage of revenue the Town would receive from the business.¹

15 Plaintiff, concerned that the Town was improperly supplying
16 electricity to Mr. Prather's business, sought input from the
17 Municipal Research and Services Center ("MRSC") and the State
18 Auditor's Office.² Based on the information provided by Plaintiff
19 only, the MRSC and the State Auditor's Office expressed concern
20 regarding the electricity arrangement between the Town and Mr.
21 Prather.

22 In 2006, however, an accountability audit by the Washington
23 State Auditor's Office for the time period of January 1, 2004

²⁵ ¹Pursuant to the concession permit, the Town would receive 5%
²⁶ of the gross revenue generated from Mr. Prather's business.

27 ²Part of Plaintiff's duties as Town Clerk/Treasurer was to
28 check with MRSC and the State Auditor's Office regarding actions
and procedures.

1 through December 31, 2005, did not find any failure to comply with
 2 state and local laws and regulations.³ Still, based on her
 3 concerns that the Town was improperly supplying electricity to Mr.
 4 Prather's business, Plaintiff drafted an invoice in March 2006 to
 5 Mr. Prather demanding payment of \$233.68.

6 Defendant Little disagreed with Plaintiff that the Town was
 7 improperly supplying electricity to Mr. Prather's business and
 8 instructed Plaintiff to refrain from sending the invoice. On April
 9 12, 2006, at a regularly scheduled meeting, Plaintiff gave her
 10 staff report and then presented a letter of resignation⁴ to the
 11 Town Council.⁵ Plaintiff's resignation letter discussed
 12 reimbursement for unused sick leave, comp time, vacation and
 13 indicated her resignation would be effective as of May 2, 2006.
 14 The Town Council inquired into Plaintiff's issues and the
 15 possibility of retaining her as Clerk/Treasurer. Ultimately, the
 16 Town Council could not confirm Plaintiff's allegations or appease
 17 her concerns, so her resignation remained of record and the
 18 meeting adjourned.

19 On April 14, 2006, two days after the Town Council meeting,
 20 Mr. Prather appeared at City Hall and paid for the electricity
 21 used by his business for the summers of 2004 and 2005. On April
 22

23 ³The Washington State Auditor's Office Accountability Audit
 Report was dated August 18, 2006, and not available until after
 24 the facts given rise to this case.

25 ⁴Plaintiff attached to her resignation letter the
 correspondence from MRSC and the State Auditor's Office.
 26

27 ⁵Plaintiff's responsibilities included reporting to the Town
 Council during meetings on the second Wednesday of each month;
 28 keeping minutes of Town Council meetings; and checking legality of
 proposed action(s) by Town.

1 19, 2006, Defendant Town along with Defendant Little and legal
 2 counsel⁶ met with Plaintiff for the purpose of offering her job
 3 back, provided she retract the statement Plaintiff made incident
 4 to her public resignation at the April 12, 2006 meeting. The
 5 subject "statement" made in her resignation letter reads, in
 6 pertinent part:

7 However, I believe it is my duty to the people
 8 of the Town of Coulee City to abide by the law
 9 and I cannot knowingly do otherwise even if
 10 requested to do so by an authority. Attached
 11 for your information are copies of
 12 communications from Municipal Research and the
 13 Auditor's office on one of the issues.

14 Ct. Rec. 9, Exh. I.

15 **II. STANDARDS OF LAW**

16 A. *Summary Judgment Standard*

17 Under Rule 56(c), summary judgment is proper "if the
 18 pleadings, depositions, answers to interrogatories, and admissions
 19 on file, together with the affidavits, if any, show that there is
 20 no genuine issue as to any material fact and that the moving party
 21 is entitled to a judgment as a matter of law." Fed.R.Civ.Pro. 56c.
 22 In ruling on a motion for summary judgment the evidence of the
 23 non-movant must be believed, and all justifiable inferences must
 24 be drawn in the non-movant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 2513 (1986). However,
 25 when confronted with a motion for summary judgment, a party who
 26 bears the burden of proof on a particular issue may not rest on

27 ⁶Charles Zimmerman, an attorney with the Association of
 28 Washington cities, was present at the April 19, 2006 meeting.

1 its pleading, but must affirmatively demonstrate, by specific
2 factual allegations, that there is a genuine issue of material
3 fact which requires trial. *Celotex Corp. v. Catrett*, 477 U.S.
4 317, 324 (1986). The party must do more than simply "show there is
5 some metaphysical doubt as to the material facts." *Matsushita*
6 *Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)
7 (footnote omitted). "Where the record taken as a whole could not
8 lead a rational trier of fact to find for the nonmoving party,
9 there is no 'genuine issue for trial.' " *Id.* at 587. This
10 court's function is not to weigh the evidence and determine the
11 truth of the matter but to determine whether there is a genuine
12 issue for trial. There is no issue for trial "unless there is
13 sufficient evidence favoring the non-moving party for a jury to
14 return a verdict for that party." *Anderson*, 477 U.S. at 249.
15 Summary judgment must be granted "against a party who fails to
16 make a showing sufficient to establish the existence of an element
17 essential to that party's case, and on which that party will bear
18 the burden of proof at trial." *Celotex*, 477 U.S. at 322. To be
19 cognizable on summary judgment, evidence must be competent."
20 *Carmen v. San Francisco Unified School Dist.*, 237 F.3d 1026, 1028
21 (9th Cir. 2001)(quoting Fed. R. Civ. P. 56(e)).
22

23 III. ANALYSIS

24 Plaintiff's Complaint alleges that Defendants violated her
25 First Amendment rights, which serves as a basis for her claims
26 under 42 U.S.C. §1983 against the named Defendants.

27 Defendants move for summary judgment based on a finding that
28 the speech serving the basis for Plaintiff's claims was made

1 pursuant to her employment duties and is not protected speech.
2 Defendants, citing *Freitag v. Ayers*, 468 F.3d 528, 543 (9th
3 Cir.2006), assert that three elements are necessary to establish a
4 claim against an employer on First Amendment grounds: (1)
5 constitutionally protected speech, (2) an adverse employment
6 action, and (3) the protected speech was a substantial or
7 motivating factor in the adverse employment action.

8 In opposition to the summary judgment, Plaintiff argues that
9 she was speaking in a private capacity at the time she uttered her
10 statements. Plaintiff further argues that there is a question of
11 fact whether retraction of the speech was a condition of her
12 continued employment (or re-employment) following her resignation.

13 A. Plaintiff's Statements Are Not Constitutionally
14 Protected Speech Under *Garcetti*

15 In regard to the first element listed in the *Freitag* case,
16 the United States Supreme Court's decision in *Garcetti v.*
17 *Ceballos*, 126 S.Ct. 1951 (2006), significantly narrowed the scope
18 of what constitutes constitutionally protected speech in the
19 context of wrongful discharge from public employment. As
20 discussed below, an adverse employment action is not present under
21 the undisputed facts before the Court. As to the speech at issue
22 in this case, the Court finds that it was not constitutionally
23 protected speech under *Garcetti*. Namely, Plaintiff was in
24 attendance at a regularly scheduled meeting constituting part of
25 her normal duties when she resigned and made the statement at
26 issue. Plaintiff raised, as part of her resignation letter,
27 issues that directly impact the employment relationship, i.e.,
28 hours, comp time, vacation time, and wages. Plaintiff was also

1 reporting actions of her office occurring just prior to
2 resignation incident to the performance of her duties.

3 The *Garcetti* Court held "when public employees make
4 statements pursuant to their official duties, the employees are
5 not speaking as citizens for the First Amendment purposes, and the
6 Constitution does not insulate their communications from employer
7 discipline." *Garcetti*, 126 S.Ct. at 1960. Here too, this Court
8 finds Plaintiff's speech at issue is not constitutionally
9 protected speech. Plaintiff's resignation letter and statements
10 therein speak to the employment relationship while at the same
11 time, criticize the employer and, in particular, by inference,
12 Defendant Little.

13 B. Plaintiff Was Not Terminated-She Resigned

14 Plaintiff suggests that retraction of her statement was a
15 condition of her continued employment or re-employment. The Court
16 finds that the second element set forth in *Freitag*, an adverse
17 employment action, is not present. It is apparent from the
18 undisputed facts that Plaintiff had unilaterally resigned and on
19 April 19, 2006, when Plaintiff was offered re-employment (or a
20 continuation of employment), she had neither attempted to withdraw
21 her resignation nor had an expectation of continuing employment
22 beyond May 2, 2006, a date she had chosen to be her last day on
23 the job.

24 For the aforementioned reasons, it is **HEREBY ORDERED:**

25 Defendants' Motion for Summary Judgment (**Ct. Rec. 7**) is
26 **GRANTED**. Plaintiff's claims against the Defendants are dismissed
27 with prejudice.

28 ///

IT IS SO ORDERED. The Clerk is hereby directed to file this Order, enter Judgment in favor of the Defendants, and furnish copies to counsel.

DATED this 15th day of February, 2008.

s/Lonny R. Suko

LONNY R. SUKO
UNITED STATES DISTRICT JUDGE